83-1894

No. 83-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

PATTERN MAKERS' LEAGUE OF NORTH AMERICA, AFL-CIO, AND ITS ROCKFORD AND BELOIT ASSOCIATIONS,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD

and

ROCKFORD-BELOIT PATTERN JOBBERS ASSOCIATION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED

Is the National Labor Relations Board granted the authority by the National Labor Relations Act, as amended, to invalidate provisions in union constitutions and bylaws requiring union members to retain their membership during a strike or lockout or at a time when a strike or lockout appears imminent?

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Pattern Makers' League of North America, AFL-CIO, and its Rockford and Beloit Associations hereby petition this Court to issue a writ of certiorari to the United States Court of Appeals for the Seventh Circuit to review the judgment in *Pattern Makers' League et al. v. National Labor Relations Board*, 724 F.2d 57 (7th Cir. No. 83-1045; Dec. 21, 1983).

OPINIONS BELOW

The National Labor Relations Board's decision and order in this case is reported at 265 NLRB No. 170, and is reprinted at pp. 9a-44a of the appendix (hereafter "App.") to this petition. The Seventh Circuit's opinion

and judgment is reported at 724 F.2d 57 and is reprinted at App. 1a-8a.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Seventh Circuit were issued on December 21, 1983. On April 10, 1984, Justice Stevens signed an order extending the time for filing a petition for writ of certiorari to and including May 18, 1984. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 7 of the National Labor Relations Act ("NLRA"), as amended, 29 U.S.C. § 157, provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section § 8(a)(3) of this Act.

Section 8(b)(1)(A) of the NLRA, 29 U.S.C. § 158(b)(1)(A), provides:

> It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 of this Act: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; . . .

STATEMENT OF THE CASE

A. The Facts

All members of petitioner Pattern Makers' League (hereafter "the League" or "the Union") take an Oath of Membership obligating them to adhere to the Union's "Constitution, Laws, Rules and Decisions." App. 30a. And, League Law 13 provides:

> [N]o resignation or withdrawal from an Association, or from the League, shall be accepted during a strike or lockout, or at a time when a strike or lockout appears imminent. [App. 28a, n.3.]

This amendment to the Union's governing laws was ratified in August 1976 by a membership vote after "appropriate notice procedures" (App. 30a), and became effective in October 1976 (*id.*).

The following year, on May 5, 1977, petitioners Rockford and Beloit Associations (hereafter "the Local Unions") commenced a strike against the Rockford-Beloit Pattern Jobbers Association, a multiemployer association. All members of the Local Unions received notice of, and all but one participated in, the secret ballot vote authorizing the strike. App. 30a. All striking members received between $125 and $150 a week in strike benefits. *Id.* Nonetheless, and notwithstanding the restriction on resignation contained in League Law 13,[1] some eleven union members attempted to resign their membership during the strike and then returned to work while the strike was still in effect. App. 27a-28a, 29a-30a. The direct result of their actions, according to unrebutted testimony, was that the strike was prolonged, and that it became necessary for the Local Unions to accept a contract embodying substandard wages and benefits. App. 31a.

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[1] "There is no contention . . . that the members who tendered their resignations were unaware of the restrictions on resignation imposed [by League Law 13]." App. 33a-34a.

The strike ended on December 19, 1977. On January 26, 1978, the Unions sent letters to the members who attempted to resign during the strike, informing them that their resignations could not be accepted because those resignations were in violation of League Law 13, and after appropriate proceedings, the strikebreaking members were fined for working for the struck employers. In response those individuals filed charges with the National Labor Relations Board (hereafter "NLRB" or "the Board"), claiming that the Union had violated § 8(b)(1)(A) of the National Labor Relations Act, as amended.

B. The Proceedings in the NLRB

After a decision by an Administrative Law Judge, the NLRB, "having determined that this and another case involving the right of a labor organization to impose restrictions on a member's right to resign presented issues of importance in the administration of the National Labor Relations Act" (App. 9a), set both cases for oral argument in tandem on January 16, 1980 before the entire Board.

After nearly three years of consideration, the companion case, *Machinists Local 1327 (Dalmo Victor)*, 263 NLRB 984 (1982), was decided by the Board on September 10, 1982, with the decision in the instant case following on December 16, 1982. In both cases the Board held that the respondent unions had committed unfair labor practices by fining members who resigned their membership and returned to work during a strike, even though the union's constitution or laws expressly restricted resignations during strike periods.

In *Dalmo Victor*, four of the five Board members held, in two separate, lengthy, and somewhat divergent opinions, that a union rule permitting union members to resign only if the resignations are submitted no later than

14 days preceding the commencement of a strike is unenforceable.[2]

Members Fanning and Zimmerman found that "a union rule which limits the right of a union member to resign only to nonstrike periods constitutes an unreasonable restriction on a member's Section 7 right to resign." 263 NLRB, at 986. However, "find[ing] it salutary to set forth a general rule for the behavior of parties in the area," these two Board Members decreed that unions ordinarily may prohibit their members from resigning only "for a period not to exceed 30 days after the tender of such a resignation." *Id.*, at 987.

Chairman Van de Water and Member Hunter agreed that the Machinists had commited an unfair labor practice by fining its resigning members, but challenged their colleagues' 30-day rule as "an arbitrary exercise of this Board's authority" that represented "a transparent

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[2] The rule at issue in *Dalmo Victor* provides: Resignation shall not relieve a member of the obligation to refrain from accepting employment at the establishment for the duration of the strike or lockout within 14 days preceding its commencement." The NLRB originally held that this provision is not a restriction on resignation during the strike period but, instead, a restriction on postresignation conduct, and found an unfair labor practice on that theory. 231 NLRB 115 (1977). On review the Ninth Circuit rejected the Board's construction of the clause as "hypertechnical," concluding that the provision "is a restriction on a member's right to resign." *NLRB v. Machinists Local 1327*, 608 F.2d 1219, 1222 (9th Cir., 1979). Because the Board majority had not reached the question whether a union constitutional provision restricting resignation would be valid, the Ninth Circuit remanded the case to the Board. Pursuant to the remand, the Board accepted as the law of the case the Ninth Circuit's construction of the Machinists' provision (263 NLRB, at 984 n.4), and proceeded to decide "whether a union can, pursuant to an internal rule prohibiting resignations during a strike or within 14 days preceding its commencement, lawfully impose a fine on members who tendered resignations and returned to work during the course of a strike" (*id.* at 984).

effort to achieve a legislative result rather than a reasoned legal conclusion." *Id.* These two Board Members concluded that *any* restriction imposed by a union upon its members' right to resign would be *per se* unreasonable, and any fine or any other discipline imposed for violation of such a restriction would constitute an unfair labor practice under § 8(b)(1)(A). *Id.*, at 988.

Member Jenkins dissented in *Dalmo Victor*, concluding that the Machinists prohibition of resignations during a strike, or within the 14 days preceding a strike, constituted a reasonable and valid internal union rule explicitly protected by the proviso to § 8(b)(1)(A). *Id.*, at 994. In his view,

> [the union] was entitled to levy fines against the Charging Parties as a means of enforcing a lawful constitutional provision governing retention of membership, a subject expressly excluded from the scope of Section 8(b)(1)(A) by the proviso thereto, and within the ambit of a union's control over its internal affairs. [*Id.*]

In the instant case, the Board wrote very briefly on the pertinent issue, adopting both the result and rationale of the *Dalmo Victor* case:

> . . . League Law 13 suffers from the same infirmity as did the rule in *Dalmo Victor*. While League Law 13 apparently provides for resignations during nonstrike periods, it clearly prohibits any such resignations once a strike has begun or when one "appears imminent." Under the Board's holding in *Dalmo Victor*, League Law 13 can be construed as neither valid nor enforceable. [App. 13a.] [3]

[3] There were other, separate unfair labor practice charges resolved in the Board decision and order in this case. None of these other Board determinations were contested in the Court of Appeals (App. 2a-3a, n.1), and no question concerning these holdings is presented in this petition.

Member Jenkins filed a dissenting opinion in *Pattern Makers*, as he did in *Dalmo Victor*. He stated:

> I would find that League Law 13, as applied herein, is a reasonable and narrow restriction on the employees' right to resign their union membership, and is within the ambit of the Union's control over its internal affairs. Accordingly, I also would find that the fines imposed pursuant to League Law 13 on the 10 employees who crossed the Union's picket lines were lawful and not in violation of the proscriptions of Section 8(b)(1)(A) of the Act. [App. 22a.]

C. The Proceedings in the Court of Appeals

The Unions sought review of the Board's decision insofar as that decision invalidated League Law 13 in the Court of Appeals for the Seventh Circuit. That court upheld the Board's ruling.

The Seventh Circuit began from the premise that the instant case is one "present[ing] an apparent conflict between two fundamental policies underlying the NLRA" which the court identified as the right of employees to refrain from collective bargaining activities and the right of unions to regulate their internal affairs without congressional or court interference (App. 3a-4a). The court below acknowledged that this Court has twice explicitly *left open* the question whether union constitutional provisions restricting resignations during a strike period are enforceable under the NLRA. See App. 1a and *Booster Lodge No. 405 v. NLRB*, 412 U.S. 84, 88-90 (1973); *NLRB v. Granite State Joint Board*, 409 U.S. 213, 217 (1972). Nonetheless, the Seventh Circuit viewed the very cases which had declined to decide the question, as well as an *earlier* case, *Scofield v. NLRB*, 394 U.S. 423 (1969), as establishing that "[a]n employee's right to resign cannot be overridden by union interests in 'group solidarity and mutual reliance'" (App. 6a). Further, while the court below acknowledged that "[t]he Union

plainly has power to control its internal matters by enforcing rules reflecting the will of the majority of its members," that court viewed "[a]n employee's decision to resign [as] personal [and not] . . . merely an 'internal matter'" (App. 7a).

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW IS IN SQUARE CONFLICT WITH THE DECISION OF THE NINTH CIRCUIT IN *MACHINISTS LOCAL 1327 v. NLRB*, 725 F.2d 1212.

A. The decisions of the Seventh Circuit and the Ninth Circuit are in square conflict as to whether the NLRA grants the NLRB the authority to rule—as the Board did in *Dalmo Victor* and then in this case (see pp. 4-7 *supra*)—that union restrictions on resignations during a strike are invalid. *Dalmo Victor* itself was reversed by the Ninth Circuit in *Machinists Local 1327 v. NLRB*, 725 F.2d 1212 (Feb. 14, 1984).[4] The Ninth Circuit expressly noted that the Seventh Circuit had, in this case, approved the Board's rule (*id.* at 1217, n.5), and expressly disagreed with the Seventh Circuit's holding and its reasoning.

Unlike the court below, the Ninth Circuit viewed the new Board rule against union restrictions on resignations during a strike as one which "frustrates federal labor policy in important respects." 725 F.2d, at 1215. Relying on *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175 (1967), the Ninth Circuit stressed that:

> [N]either Congress nor the [Supreme] Court gave individual members license to avoid union rules designed to protect the welfare of the bargaining unit. [This is why] Congress . . . enacted the proviso to § 8(b)(1)(A), which reserves to unions the power

[4] The NLRB's petition for rehearing in *Machinists Local 1327*, filed March 26, 1984, is presently pending.

> to make reasonable rules regarding the retention and acquisition of membership. [725 F.2d, at 1216.]

Further, the Ninth Circuit disagreed with the view of the Board, echoed by the Seventh Circuit in this case (App. 3a-4a), that this Court has, subsequent to *Allis-Chalmers*, established "a balancing test" allowing "either the Board or the courts to conduct an ad hoc weighing of the allegedly competing interests described in the main text of § 8(b)(1)(A) on the one hand, and the proviso to § 8(b)(1)(A) on the other." 725 F.2d at 1216-17. And the Ninth Circuit explicitly and emphatically rejected as "false" the basic premise of the Board and of the court below—that there is a "conflict between the employee's right to resign union membership and the union's interest in making rules regarding the acquisition and retention of membership." 725 F.2d at 1217; *see also id.*, at n.5 (noting that the Seventh Circuit in this case assumed the same conflict as did the Board):

> These rights are preserved in § 7 and § 8(b)(1)(A) of the Act, respectively. Because *both* the employee's right and the union's interest are policies that have been "embedded" in the labor laws for over 35 years, neither can "impair" or "override" the other within the meaning of *Scofield*. They must—and do—coexist. [725 F.2d at 1217 (emphasis in original).]

Finally, unlike the Board and the court below, the Ninth Circuit, while recognizing that "'the power of the union over the member is certainly no greater than the union-member contract'" (725 F.2d at 1218, *quoting Granite State Board*, *supra*, 409 U.S., at 217), maintained that, under the § 8(b)(1)(A) proviso, the member's obligation is, under the present circumstances, also no *less* than the obligation the union constitution and laws establish:

> [T]he terms of the contract before us condition the member's right to resign on his promise not to break the strike. If the member can escape his obligations

> by pleading, when the union attempts to collect the fine, that he is no longer part of the union, then the terms of this contract mean little. [725 F.2d at 1218.]

B. The conflict between the Seventh Circuit and the Ninth Circuit concerns an important and recurring question central to the national labor policy. Indeed, this Court has three times addressed issues concerning union fines imposed upon employees who, in violation of union rules, work during a strike, expressly leaving for later decision the precise question presented in this case.

In *Allis-Chalmers*, *supra*, the question was whether a union that fines members who cross a union's picket line and return to work during an authorized strike violates § 8(b)(1)(A) of the Act. This Court held that, even though §7 does otherwise protect the right of employees to refrain from joining in strike activity (388 U.S., at 178), such union discipline of strikebreaking members does not constitute the "restraint or coercion" made unlawful by § 8(b)(1)(A).

First, the *Allis-Chalmers* Court ruled unanimously (*see* 388 U.S., at 199 (White, J., concurring)) that the substantive rule of conduct being enforced—that union members must respect the collective decision to strike by refraining from working for the struck employer—is in no way at odds with national labor policy, but, rather, is one the union has every right to impose:

> Integral to . . . federal labor policy has been the power in the chosen union to protect against erosion its status under that policy through reasonable discipline of members who violate rules and regulations governing membership. That power is particularly vital when the members engage in strikes. The economic strike against the employer is the ultimate weapon in labor's arsenal for achieving agreement upon its terms, and "[t]he power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent. . . ." Provisions in union

> constitutions and bylaws for fines and expulsion of recalcitrants, including strikebreakers, are therefore commonplace and were commonplace at the time of the Taft-Hartley amendments. [388 U.S., at 181.]

Similarly, it was common ground that "the proviso to § 8(b)(1)(A) preserves to the union the power to *expel* the offending member." 388 U.S., at 183; emphasis supplied; *id.*, at 190; *id.*, at 199 (White, J., concurring); *id.*, at 199-200 (Black, J., dissenting). In that case, however, the proviso to § 8(b)(1)(A) did not in terms apply, because the anti-strikebreaking rule was not enforced by a sanction directly affecting membership but, instead, through a court-enforced fine. It was this circumstance which gave rise to the dispute in *Allis-Chalmers*. The majority in that case, after surveying the background of the main body of § 8(b)(1)(A), determined that the 1947 Congress did not intend in that section to interfere with "the relationship of a union member to his own union" (*id.*, at 191):

> Union membership allows the member a part in choosing the very course of action to which he refuses to adhere. . . . [A] distinction between court enforcement and expulsion would [therefore] have been anomalous. . . . Congress was operating within the context of the "contract theory" of the union-member relationship. . . . The efficacy of a contract is precisely its legal enforceability. . . . Thus this history of congressional action does not support a conclusion that the Taft-Hartley prohibitions against restraint or coercion of an employee to refrain from concerted activities included a prohibition against the imposition of fines on members who decline to honor an authorized strike and attempts to collect such fines. Rather, the contrary inference is more justified in light of the repeated refrain . . . that Congress did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status. [388 U.S., at 191, 192 & 195.]

In two later cases, *Granite State Board*, *supra*, and *Booster Lodge*, *supra*, the Court was faced with situations in which unions attempted to discipline employees for violating the union's rule against strikebreaking *after* resigning their union membership.[5] In both cases the Court held that

> the power of the union over the member is certainly no greater than the union-member contract. Where a member *lawfully* resigns from a union and thereafter engages in conduct which the union rule proscribes, the union commits an unfair labor practice when it seeks enforcement of fines for that conduct. [*Granite State Board*, *supra*, 409 U.S., at 217 (emphasis supplied); *see also Booster Lodge*, *supra*, 412 U.S., at 88.]

The Seventh Circuit in this case purported to find in *Granite State Board* and *Booster Lodge* compelling support for the proposition that union members have an absolute right under §§ 7 & 8(b)(1)(A) of the NLRA, enforceable despite an explicit union constitutional provision to the contrary, to resign from a union during a strike and return to work. App. 4a-7a. Both decisions, however, expressly and repeatedly, limited their holdings to situations in which "[n]either the contract nor the Union's constitution or bylaws contained any provision defining or limiting the circumstances under which a member could resign." *Granite State Board*, *supra*, 409 U.S., at 214. Indeed, this qualification appears a total of five times in the four-page *Granite State Board* opinion,[6]

[5] The only significant difference between the two cases was that in *Granite State Board*, the penalty for working during the strike was imposed after the strike began, by a vote at a membership meeting (409 U.S., at 214), while in *Booster Lodge*, the union's constitution expressly prohibited members from strikebreaking (412 U.S., at 84).

[6] Aside from the quotation in the text, these instances are as follows:

and the same number of times in the five-page *Booster*

(1) Under § 7 of the Act the employees have "the right to refrain from any or all" concerted activities relating to collective bargaining or mutual aid and protection, as well as the right to join a union and participate in those concerted activities. *We have here no problem of construing a union's constitution or bylaws defining or limiting the circumstances under which a member may resign from the union.* We have, *therefore*, only to apply the law which normally is reflected in our free institutions—the right of the individual to join or to resign from association, as he sees fit. . . . [409 U.S., at 216 (emphasis supplied).]

(The court of appeals' reference to this passage as supporting an absolute right under the NLRA to resign from labor unions (App. 5a) ignores the underlined sentence, and thereby grievously distorts this Court's evident meaning—*viz.*, that as a contractual matter union members, like other members of voluntary associations, may resign their membership *absent a valid restriction on resignation.*)

(2) [T]he power of the union over the member is certainly *no greater* than the union member contract. . . . [W]hen there is a *lawful* dissolution of a union-member relation, the union has no more control over the former member than it has over the man in the street. [409 U.S., at 217 (emphasis supplied).]

(3) [W]hen a member *lawfully* resigns from the union, its power over him ends. [409 U.S., at 215 (emphasis supplied).]

(4) We do not now decide to what extent the contractual relationship between union and member may curtail the freedom to resign. *But where, as here, there are no restraints on the resignation of members*, we conclude that the vitality of § 7 requires that the member be free to refrain in November from the action he endorsed in May. . . . [409 U.S., at 217-18 (emphasis supplied).]

(Again, the court below distorted the Court's meaning in this passage by relying on the immediately succeeding phrase—that a union member's "§ 7 rights are not lost by a union's pleas for solidarity or by its pressures for conformity and submission to its regime" (409 U.S., at 218, quoted App. A—)—while ignoring the Court's explicit limitation of this observation to circumstances other than those here present.)

Lodge opinion.[7]

In sum this Court has explicitly left for another day the question whether the NLRA limits the right of unions to limit resignations through properly promulgated provisions in their constitutions and bylaws. *Granite State Board*, *supra*, 409 U.S., at 217; *Booster Lodge*, *supra*, 412 U.S., at 88. Now that the NLRB has decided that question and the Board's rule has precipitated a square conflict in the circuits, the appropriate day for determining the question twice left open by this Court has arrived.

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[7] Those instances are:

(1) Neither [the union's] constitution nor its bylaws contained any provision expressly permitting or forbidding such resignations. [412 U.S., at 86.]

(2) Since in [*Granite State Board*] there was no provision in the Union's constitution or bylaws limiting the circumstances in which a member could resign, we concluded that the members were free to resign at will and that § 7 of the Act, 29 U.S.C. § 157, protected their right to return to work during a strike commenced while they were union members. [412 U.S., at 87-88.]

(3) Here, as in [*Granite State Board*,] the Union's constitution and bylaws are silent on the subject of voluntary resignation from the Union. And here, as there, we leave open the question of the extent to which contractual restriction on a member's right to resign may be limited by the Act. [412 U.S., at 88.]

(4) Since there is no evidence that the employees here either knew of or had consented to any limitation on their right to resign, we need "only to apply the law which is normally reflected in our free institutions—the right of an individual to join or to resign from associations, as he sees fit." [412 U.S., at 88.]

(5) The Union contends, however, that a result different from [*Granite State Board*] is warranted in this case, *even though its constitution does not expressly restrict the right to resign during a strike.* [412 U.S., at 88-89 (emphasis supplied).]

II. THE SEVENTH CIRCUIT'S DECISION IS INCONSISTENT WITH THE LANGUAGE AND LEGISLATIVE HISTORY OF § 8(b)(1)(A) OF THE NLRA.

Allis-Chalmers, *supra*, makes clear that the substantive rule of conduct enforced in this case—that union members who work for the struck employer during a duly authorized strike are subject to union discipline—is consistent with national labor policy.[8] If the Union's rule against resignations during a strike is equally valid, it follows that the Union was simply exercising its authority to fine an individual who was a member at the relevant time for violating the Union rule against strikebreaking, and was therefore, under *Allis-Chalmers*, acting lawfully.

As *Aliis-Chalmers* also recognized, a union does not violate § 8(b)(1)(A) simply by interfering in some manner with "the exercise of the rights guaranteed in [§ 7]," including the right to refrain from concerted activity. Employees have, as the Court in *Allis-Chalmers* noted (388 U.S., at 178), a right protected under § 7 of the

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[8] Because *Allis-Chalmers* has already decided this question, the heavy reliance of the court below on *Scofield*, *supra*, is misplaced. The question in *Scofield* (394 U.S. at 424-426) was whether a particular union substantive rule of conduct rule is so inconsistent with national labor policy that the rule may not be enforced in any manner, whether by fine, expulsion, or otherwise, and the purpose of the mode of analysis set out therein was to determine whether the work rule in question there met that standard. Here, that question has already been resolved, in favor of the union rule of conduct, by *Allis-Chalmers*. The open question is whether that otherwise valid rule may be applied against individuals who resign in violation of a union restriction on resignation.

Contrary to the suggestions of the court below (App. 4a), *Scofield* in no way addressed this issue. The *Scofield* court *did* observe that, in the case before it, the union member was free to leave the union at any time. 394 U.S., at 430. But, as this Court later recognized in *Granite State Board*, *supra*, 409 U.S., at 217, this observation in *Scofield* simply "indicates that the power of the union over the member is certainly no greater than the union-member contract."

Act to refuse to join in a strike. But the existence of a § 7 right was only the beginning of the analysis in *Allis-Chalmers*, not, as in the opinion below, its end point. As *Allis-Chalmers* recognized, for there to be a violation of § 8(b)(1)(A) there must be, *in addition to* some impedence of a right otherwise protected under § 7: (1) "restraint or coercion"; and (2) a kind of union action not within the proviso to § 8(b)(1)(A), which protects "*the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.*"[9]

Although the Seventh Circuit failed to so acknowledge, there is no escaping the point that in this case, unlike *Allis-Chalmers*, the plain words of the § 8(b)(1)(A) proviso encompass rules of the kind at issue here. A rule requiring a member to retain his or her membership during a strike period is surely a rule regarding "retention of membership." Indeed, it is more clearly such a rule than an expulsion provision, which all agree is encompassed in the proviso: An expulsion provision concerns not "retention of membership" but the inverse—loss of membership.[10]

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[9] As we have seen (pp. 10-11, *supra*), *Allis-Chalmers* recognizes that enforcement of a rule against strikebreaking would indubitably be valid, because the ability of unions to expel members is protected by the proviso to § 8(b)(1)(A); only because a fine rather than expulsion was involved did the Court proceed to decide whether there was "restraint or coercion" and conclude that there was not.

[10] It is also significant that the language of the proviso speaks in terms of "*impair*[*ing*] the right of a labor organization to prescribe its own rules." Thus, Congress did not simply say that § 8(b)(1)(A) shall not prevent unions from prescribing rules of certain types. Instead the proviso is couched in terms of preserving intact of preexisting right. This language suggests a realization that there *was* a preexisting body of law regarding that "right," and that the intent was simply to leave that body of law intact. And, indeed, there is a body of common law which enforces nonarbitrary resignation restrictions in voluntary associations in circumstances very similar to the present ones. *See, e.g., Troy Iron & Nail Factory v. Corning*, 44 Barb. 231 (N.Y. 1864) (enforcing rule of a landowners' association that no member may resign as long as he continues to own or occupy certain land); *Leon v. Chrysler Motors Corp.*, 350 F.Supp. 877 (D.N.J. 1973) (enforcing a rule of a mutual advertising association that no auto dealer may resign from membership except with the consent of a majority of the association's members); *Ewald v. Medical Society*, 70 Misc. 615, 128 N.Y.S. 886, 888 (N.Y. App. 1911) (enforcing rule of a county medical society that no member charged with ethical violations may resign while such charges are pending); *Associated Press v. Emmett*, 45 F.Supp. 907, 921, 923 (S.D. Cal. 1942) (upholding a ruling requiring two years notice or consent of the Board of Directors for a resignation to be valid).

The evident meaning of the plain language of the § 8(b)(1)(A) proviso is reinforced by the history of the Taft-Hartley Act which shows a conscious decision by Congress to excise from the House bill any provision that could be read as *forbidding* unions from limiting resignations by members. As it passed the House, the bill that became the Taft-Hartley Act contained "right to refrain" language identical for present purposes to that contained in the final Act (H.R. 3020, 80th Cong., 1st Sess., § 7(a), I National Labor Relations Board, *Legislative History of the Labor Management Relations Act of 1947* ("Leg. Hist."), at 176), and *also* contained two provisions dealing specifically with the obligation to continue union membership: First, the House bill would have made it an unfair labor practice for employers and labor organizations, "by intimidating practices, to interfere with the exercise by employees of rights guaranteed in section [7] or to compel or seek to compel any individual to become *or remain* a member of any labor organization" (H.R. 3020, *supra*, § 8(b)(1), I Leg. Hist. 178-79 (emphasis added)); second, that bill would have made it an unfair labor practice for a union "to deny to any member the right to resign from the organization at any time" (H.R. 3020, *supra*, § 8(c)(4), I Leg. Hist. 180).

No equivalent to the § 8(b)(1)(A) proviso was contained in the House bill.

In putting together the final version of the statute, the Conference Committee left out *both* the foregoing attempts in the House bill to regulate union rules limiting resignations from membership, and, at the same time, included the § 8(b)(1)(A) proviso, which in its ordinary meaning validates such union rules. Thus, as in *Labor Board v. Drivers Local Union*, 362 U.S. 274 (1960) (which involved, like this case, an NLRB attempt to read into the general language of § 8(b)(1)(A) a restriction on certain union activity):

> Plainly, the [union's] conduct in the instant case would have been prohibited if the House bill had become law. But the House conferees abandoned the House bill in conference and accepted the Senate proposal. H.R. Conf. Rep. No. 510 on H.R. 3020, 80th Cong. 1st Sess., 42. . . . "It is relevant to recall that the Taft-Hartley Act was, to a marked degree, the result of conflict and compromise between strong contending forces. . . . This is relevant in that it counsels wariness in finding by construction a broad policy . . . as such when . . . it is clear that those interested in just a condemnation were unable to secure its embodiment in enacted law." [*Id.*, at 289-90.]

This is a case, then, in which there is no room for the *ad hoc* balancing approach adopted by the Board and approved by the Seventh Circuit. Rather, Congress struck the balance in 1947, and determined that whatever the reach otherwise of § 7 and of § 8(b)(1)(A) of the NLRA, unions retain the common-law right of voluntary associations to require, as a condition of membership, a commitment to remain a member during the periods critical to the success of the collective effort. Since "the accommodation between [the] competing factors has already been made by Congress" (*Machinists Local v. Labor*

Board, 362 U.S. 411, 428 (1960)), the Court should grant the petition for a writ of certiorari in order to resolve the conflict between the circuits and to restore the accommodation Congress struck.

CONCLUSION

For the reasons stated above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT

No. 83-1045

PATTERN MAKERS' LEAGUE OF NORTH AMERICA, AFL-CIO, and ITS ROCKFORD AND BELOIT ASSOCIATIONS,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

ROCKFORD-BELOIT PATTERN JOBBERS ASSOCIATION,
Intervening Respondents.

Argued Sept. 27, 1983

Decided Dec. 21, 1983

Before BAUER, ESCHBACH and COFFEY, Circuit Judges.

BAUER, Circuit Judge.

The issue squarely confronting us is whether a union in its constitution may deny its members the opportunity to resign from the union during a strike or when a strike is imminent. The United States Supreme Court twice has acknowledged, but has not been required to decide, this issue. *Booster Lodge No. 405 v. NLRB*, 412 U.S. 84, 88-90, 93 S.Ct. 1961, 1964-1965, 36 L.Ed.2d 764 (1973); *NLRB v. Granite State Joint Board, Textile Workers Union, Local 1029*, 409 U.S. 213, 217, 93 S.Ct. 385, 387, 34 L.Ed.2d 422 (1972). We find such a rule invalid.

I

In May 1976, Petitioner Pattern Makers' League of North America (the Union) amended its constitution by

adding the following provision: "13. No resignation or withdrawal from an Association, or from the League, shall be accepted during a strike or lockout, or at a time when a strike or lockout appears imminent." This provision, dubbed League Law 13, was ratified in August 1976 by the membership of the various member associations of the Union.

On May 5, 1977, the Union struck members of Intervenor Rockford-Beloit Pattern Jobbers Association (the Employer), a multi-employer bargaining unit consisting of eleven companies engaged in the manufacture and sale of patterns for casting. The strike ended December 19, 1977, when the parties agreed on a new collective bargaining agreement.

Eleven employees, ten from the Beloit Association and one from the Rockford Association, tendered their resignations to the Union during the strike. The first employee resigned on September 11. He returned to work for the Employer on September 12 and on that day the Union expelled him. After the strike ended, the Union sent letters to the other ten employees explaining that their resignations were not accepted because League Law 13 prohibited resignations during strikes. The Union retained these employees as members and fined them an amount commensurate with their wages earned while working during the strike.

The National Labor Relations Board ruled that the Union violated Section 8(b)(1)(A) of the National Labor Relations Act, 29 U.S.C. § 158(b)(1)(A) (1974), by fining individuals who had tendered resignations from the Union and returned to work in violation of League Law 13.[1] The Board rested its decision on the rationale

[1] The Board further ruled, in agreement with the findings of the administrative law judge, that the Union violated Section 8(b)(1)(A) by threatening employees with reprisals in the form of physical harm or loss of accrued pension benefits if the employees crossed picket lines, and violated Sections 8(b)(1)(A) and 8(b)(2) by imposing a fine and excessive fees and dues on an employee as a condition of readmission to the Union after expelling him for submitting his resignation and by attempting to cause an employee's discharge from employment for failing to comply with the provisions of the union-security agreement. The Union has not challenged these rulings before this court, and, accordingly, they are summarily enforced.

enunciated in *Machinists Local 1327, International Association of Machinists, District Lodge 115 (Dalmo Victor)*, 263 N.L.R.B. 141 (1982), *petition for review filed*, Nos. 82-7580 & 82-7701 (9th Cir. Oct. 4, 1982). In *Dalmo Victor*, the Board determined that a union's constitutional provision prohibiting members from resigning during a strike or within fourteen days preceding its commencement was invalid and thus unenforceable. The Board reasoned that the Supreme Court holdings in *Granite State* and *Scofield v. NLRB*, 394 U.S. 423, 89 S.Ct. 1154, 22 L.Ed.2d 385 (1969), led to the "inescapable conclusion" that union members have the right to resign in both strike and non-strike situations. Because League Law 13 imposed the same type of restriction as the provision struck down in *Dalmo Victor* as an unreasonable restriction on a union member's Section 7 right to resign, the Board held that fines imposed pursuant to the law violated Section 8(b)(1)(A).[2]

II

The issue of resignations from unions presents an apparent conflict between two fundamental policies under-

[2] The Board in *Dalmo Victor* recognized the competing interest of the union in reflecting the will of the majority of its members and fashioned a rule allowing the union to impose a 30-day notice of resignation requirement on its members. Two members of the Board in the majority of the case before us—Chairman Van de Water and Hunter—concurred in *Dalmo Victor*, agreeing that the union rule impermissibly restricted the members' right to resign, but arguing that the 30-day rule announced by the majority was arbitrary and inconsistent with the NLRA and interpretive Supreme Court rulings. The issue of the validity of a Board-fashioned 30-day notice provision is not presented in this case.

lying the NLRA. First, employees should not be restrained from exercising their right to refrain from collective bargaining activities. Second, unions must be allowed flexibility to regulate their internal affairs without the interference of Congress or the courts. This apparent conflict is reflected in Section 7 of the NLRA, 29 U.S.C. § 157 (1947), which guarantees employees "the right to self-organization, . . . to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and . . . the right to refrain from any or all of such activities . . .," and in Section 8(b)(1), which makes it an unfair labor practice "to restrain or coerce (A) employees in the exercise of the rights guaranteed in section [7]: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . . ." Our task is to resolve the tension between these policies when the Union seeks absolutely to prohibit resignations during a strike or when one appears imminent.

The Union first claims that the proviso to Section 8(b)(1)(A) validates League Law 13. That section gives a union flexibility to manage its own affairs. Although the Supreme Court has not resolved this issue, its decisions guide our analysis of the Union's claim. The Supreme Court, in considering the parameters of a union's authority, has developed an analysis that distinguishes between union rules that touch wholly "internal" affairs and rules that affect "external" activities. *Scofield*, 394 U.S. at 429-30, 89 S.Ct. at 1157-58. The *Scofield* Court stated that "it has become clear that if the rule invades or frustrates an overriding policy of the labor laws the rule may not be enforced, even by fine or expulsion, without violating § 8(b)(1)." *Id.* at 429, 89 S.Ct. at 1158.

The Supreme Court has applied this standard consistently to invalidate union rules that conflict with the

fundamental policies of the NLRA. For example, in *Granite State* many union members resigned during a strike and returned to work. The union levied fines against those workers for violating a membership resolution that any member aiding or abetting the employer during the strike would be subject to a fine. The Supreme Court ruled that the union's fines frustrated the overriding "right of the individual to join or to resign from associations, as he sees fit . . . ." *Granite State*, 409 U.S. at 216, 93 S.Ct. at 387. Similarly, in *Booster Lodge* the union sought court enforcement of fines it imposed on employees who had resigned from the union. The employees had returned to work despite a union constitutional provision prohibiting strikebreaking by union members. The union argued that the obligation to refrain from strikebreaking bound union members notwithstanding their resignations. *Booster Lodge*, 412 U.S. at 89, 93 S.Ct. at 1964. The Supreme Court stated:

> [I]n order to sustain the Union's position, we would first have to find, contrary to the determination of the Board and of the Court of Appeals, that the Union constitution by implication extended its sanctions to nonmembers, and then further conclude that such sanctions were consistent with the Act. But we are no more disposed to find an implied post-resignation commitment from the strikebreaking proscription in the Union's constitution here than we were to find it from the employees' participation in the strike vote and ratification of penalties in [*Granite State*].

Id. at 89-90, 93 S.Ct. at 1964-1965 (footnote omitted).

Although the unions in *Granite State* and *Booster Lodge* did not restrict resignations, the Court's reasoning applies equally here. The Section 7 right to refrain from union activities encompasses the right of members to resign from the union. *See, e.g., Granite State*, 409 U.S. at 216, 93 S.Ct. at 387; *NLRB v. Ma-*

chinists Local 1327, International Association of Machinists, 608 F.2d 1219, 1221 (9th Cir. 1979); *NLRB v. Martin A. Gleason, Inc.*, 534 F.2d 466, 476 (2d Cir. 1976). We think that because League Law 13 completely suspends an employee's right to choose not to be a union member and thus no longer subject to union discipline, it frustrates the overriding policy of labor law that employees be free to choose whether to engage in concerted activities. An employee's right to resign cannot be overridden by union interests in "group solidarity and mutual reliance in situations in which a collective effort is necessary to achieve a particular result" upon which the Union so heavily relies. Petitioners' br. at 9-10. Although a union has a powerful interest in maintaining its strength during a strike, *see N.L.R.B. v. Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 at 181, 87 S.Ct. 2001 at 2007, 18 L.Ed.2d 1123, an employee's Section 7 rights "are not lost by a union's plea for solidarity or by its pressures for conformity and submission to its regime." *Granite State*, 409 U.S. at 218, 93 S.Ct. at 387. *See id.* (Burger, C.J., concurring) ("[T]he institutional needs of the Union, important though they are, do not outweigh the rights and needs of the individual.").

An employee's right to resign not only is guaranteed by Section 7, but also is supported by an employee's own strong interests. Among those interests are an employee's freedom to change his or her mind about the usefulness or effectiveness of a strike, such as when an employer has been able to replace the strikers, or an employee's desire to return to work for completely personal reasons, such as family hardship. A union rule compelling membership fully subject to union authority improperly infringes upon these interests. Moreover, forced continued membership distorts the balance between encouraging collective activities among workers and protecting individuals from coercion.

The Union plainly has power to control its internal matters by enforcing rules reflecting the will of the ma-

jority of its members. *See Allis-Chalmers*, 388 U.S. at 181, 87 S.Ct. at 2007. When an employee is a full union member he or she is subject to those rules; when that employee resigns, the union's power ends. Just as the Union's power may not extend to an employee's post-resignation activities, it also may not extend to forbid an employee from resigning. An employee's decision to resign is personal; a union rule requiring retention of membership cannot be considered merely an "internal matter." Accordingly, a union cannot compel membership during a strike under the proviso to Section 8(b)(1)(A) in derogation of an employee's right to choose whether to be a part of such concerted activity.

The Union's second argument in support of League Law 13 is its theory of "mutual reliance": because the Union members relied on each other when voting to strike, they waived their Section 7 right to abandon the strike by resigning from the Union. The Union stresses that each member joined the Union or retained Union membership with the knowledge that resignations were prohibited during strikes or lockouts. The Union claims the union-employee relationship is thus voluntary and enforceable.

The Supreme Court, however, gave this mutual reliance theory "little weight" in *Granite State*, 409 U.S. at 217, 93 S.Ct. at 387, and determined that, in the absence of a union rule restraining resignations, Section 7 requires that Union members remain free to change their minds and resign during a strike. In that case union members voted to strike and, soon after the strike began, voted unanimously to fine strikebreakers. The First Circuit concluded that union members who voted had waived their right to resign without penalty in the interest of allowing the union to maintain strike discipline. 446 F.2d 369, 372-74 (1st Cir. 1972), *rev'd*, 409 U.S. 213, 93 S.Ct. 385, 34 L.Ed.2d 422 (1972). The

Supreme Court decided that the employees' interests took precedence.

We can discern no qualitative difference between employees agreeing not to aid or abet a company during a strike and a union rule forbidding resignations during a strike. Indeed, the principal reason for a rule prohibiting resignations during strikes is to insure that union members do not aid the company by returning to work.[3] Nonetheless, employees should have the right to change their minds about remaining members of the union.

III

The Supreme Court held in *Scofield* that a union rule setting a ceiling on the production for which union members could accept immediate pay did not contravene any policy of the NLRA. The concept that union members were free to leave the union and escape the rule was central to the Court's analysis. *Scofield*, 394 U.S. at 430, 89 S.Ct. at 1158. "If a member chooses not to engage in this concerted activity and is unable to prevail on the other members to change the rule, then he may leave the union and obtain whatever benefits in job advancement and extra pay may result . . . ." *Id.* at 435, 89 S.Ct. at 1161. This fundamental principle is the embodiment of individuals' Section 7 rights and safeguards the balance between individual rights and the collective power of the union. The principle applies to the circumstances presented in this case.

The petition for review is denied.

ENFORCEMENT GRANTED.

[3] It is the same thing to say that a rule prohibiting resignations during strikes is designed to strengthen the union's power through strike solidarity.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case 33-CB-1132

PATTERN MAKERS' LEAGUE OF NORTH AMERICA,
AFL-CIO, and ITS ROCKFORD AND BELOIT ASSOCIATIONS

and

ROCKFORD-BELOIT PATTERN JOBBERS ASSOCIATION

DECISION AND ORDER

On November 21, 1978, Administrative Law Judge Gerald A. Wacknov issued the attached Decision in this proceeding. Thereafter, the Respondents, Pattern Makers' League of North America, AFL-CIO, Rockford Association, and Beloit Association, filed exceptions and a supporting brief and the General Counsel filed limited exceptions and a brief in support thereof, as well as a brief otherwise in support of the Administrative Law Judge's Decision.

On December 12, 1979, the Board, having determined that this and another case,[1] involving the right of a labor organization to impose restrictions on a member's right to resign, presented issues of importance in the administration of the National Labor Relations Act, as amended, scheduled oral argument for January 16, 1980. Thereafter, on January 16, 1980, Respondents, the General Counsel, the Charging Party, and the American

[1] *Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115 (Dalmo Victor)*, 263 NLRB No. 141 (1982).

Federation of Labor and Congress of Industrial Organizations,[2] presented their oral arguments before the Board.

The Board has considered the record and the attached Decision in light of the exceptions, briefs, and oral arguments, and, for the reasons stated below, has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge,[3] as modified herein.

The principal issue in this case involves the question of whether Respondents violated Section 8(b)(1)(A) of the Act by imposing fines on members who tendered resignations and returned to work during the course of a strike in apparent contravention of Respondents' rule prohibiting resignations during a strike or lockout or when one appeared imminent.

The pertinent facts reveal that, in May 1976, Respondents, in an attempt to end what they viewed as "a regular pattern of strikebreaking by employers," adopted and ratified an amendment to their constitution, known as League Law 13, which provided that "no resignation or withdrawal from an Association, or from the League, shall be accepted during a strike or lockout, or at a

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[2] The American Federation of Labor and Congress of Industrial Organization appeared as *amicus curiae* and argued orally on behalf of Respondents' position.

[3] The Administrative Law Judge, *inter alia*, found that Respondents had violated Sec. 8(b)(1)(A) of the Act by threatening employees with physical harm and loss of accrued pension benefits if they crossed the picket line, and had violated Secs. 8(b)(2) and 8(b)(1)(A) by imposing a fine and excessive fees and dues on employee William Kohl after expelling him from membership for having submitted his resignation. No exceptions were taken to these findings.

The Administrative Law Judge, however, also found that Respondent Beloit Association had not sought to have employee John Nelson discharged for failing to comply with the terms of a union-security agreement, as alleged by the General Counsel. The General Counsel has excepted to this finding. For the reasons more fully discussed, *infra*, we find merit to the General Counsel's exception.

time when a strike or lockout appears imminent." Thereafter, on or about May 5, 1977, Respondents commenced a strike against Rockford-Beloit Pattern Jobbers Association, a multiemployer association, and its individual members which culminated on December 19, 1977, with the execution of a collective-bargaining agreement that contained, among other things, a union-security clause. During the course of that strike, 10 employees tendered their resignations from the Respondent Associations[4] and returned to work. By letters dated January 26, 1978, Respondents notified these employees that their resignations were in violation of League Law 13 and would not be accepted; they further informed them that they were being fined for returning to work during the strike.

The General Counsel contends that League Law 13 unlawfully intrudes into the rights guaranteed to employees by Section 7 of the Act and that, consequently, the fines imposed thereunder are unlawful and in violation of Section 8(b)(1)(A) of the Act. Respondents, on the other hand, assert that League Law 13 constitutes a valid exercise of their right to enact internal union rules governing the acquisition and retention of membership, as set forth in the proviso to Section 8(b)(1)(A). They therefore argue that the fines imposed on those individuals who resigned and returned to work during the strike in violation of such rule were lawful. The Administrative Law Judge found no merit to Respondents' contention. Rather, he noted that "[t]he blanket prohibition of resignations or withdrawals during strikes

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[4] The record reveals that employees John Cammilleri, Donald Carlson, Jerry Mikkelson, Lawrence Wilkins, Pierre LaBounty, Fred Bull, Ralph Hopper, David Darling, and Lannie McDonald tendered their resignations to Respondent Beloit and employee Jon Wenger tendered his resignation to Respondent Rockford. As noted in fn. 3, *supra*, employee Kohl also tendered his resignation during the strike, was expelled from the Union, and was subsequently fined. As stated, however, no exceptions were taken to the Administrative Law Judge's findings concerning Kohl.

embodied in League Law 13 permits of no exceptions or qualifications, obviously according no weight whatsoever to the competing considerations often confronting striking employees." He thus concluded that League Law 13 constitutes "an impermissible encroachment on employees' statutory right to resign union membership and that the fines imposed thereunder are in violation of the Act."

The Administrative Law Judge's findings in this regard are in substantial accord with the Board's recent holding in *Dalmo Victor*, *supra*, which, as noted, involved a similar issue. In *Dalmo Victor*, the Board was asked to determine the validity of a provision in a union's constitution which prohibited members from resigning during the course of a strike or within 14 days preceding its commencement. The Board there found that provision to be invalid and unenforceable.[5] In so doing, the Board noted that in *Scofield, et al.* v. *N.L.R.B.*, 394 U.S. 423 (1969), the Supreme Court stated that union members must be free to leave a union to escape membership conditions which they consider onerous. Additionally, the Board noted that in *N.L.R.B.* v. *Granite State Joint Board, Textile Workers Union of America, Local 1029 AFL-CIO* [*International Paper Box Machine Co.*], 409 U.S. 213 (1972), the Supreme Court "recognized that there may be circumstances under which a member might feel compelled to resign during a strike." Finding nothing in the *Scofield* or other subsequent Supreme Court decisions to suggest that a member's right to resign could be limited to nonstrike periods only and finding that a reading of the *Scofield* and *Granite State* decisions lead to the inescapable conclusion that "a member's right to resign from a union applies both to strike and nonstrike situation," the Board held that "a union rule which limits the right of a union member to resign only to nonstrike periods constitutes an unreasonable restriction on a

[5] Member Jenkins dissented.

member's Section 7 right to resign."[6] Applying its holding to the rule in question, the Board concluded that, since the rule failed to provide for resignations during a strike, it was neither valid nor enforceable. It accordingly found the fines imposed thereunder to be in violation of Section 8(b)(1)(A) of the Act.

In the instant case, Respondent's League Law 13 suffers from the same infirmity as did the rule in *Dalmo Victor*. While League Law 13 apparently provides for resignations during nonstrike periods, it clearly prohibits any such resignations once a strike has begun or when one "appears imminent." Under the Board's holding in *Dalmo Victor*, League Law 13 can be construed as neither valid nor enforceable. Consequently, we find, in agreement with the Administrative Law Judge, that the fines imposed pursuant to League Law 13 were unlawful and violative of Section 8(b)(1)(A) of the Act.[7]

[6] *Id.*, sl. op., pp. 10-11. In *Dalmo Victor*, the Board also found that, while a member has a Sec. 7 right to resign from a union and return to work during a strike, "a union's need to reflect the continuing will of a majority of its members, especially during a strike, reflects not only a legitimate union interest but also implements a right inherent in the statutory scheme of our labor laws." In view of the competing interests involved, neither of which was deemed to be absolute, the Board found it "salutary to set forth a general rule for the behavior of parties in this area." Thus, it stated that a rule restricting a member's right to resign for a period not to exceed 30 days (unless extraordinary circumstances warranted a longer period) after the tender of resignation would be considered reasonable. While concurring that the provision in question constituted an unreasonable restriction on a member's right to resign, Chairman Van de Water and Member Hunter would find that any restriction on a member's right to resign, including a 30-day limitation, would be unreasonable. See their separate opinion in *Dalmo Victor*, *supra*.

[7] Although we agree with the Administrative Law Judge that League Law 13 is unenforceable, we find his recommendation that that provision be expunged from Respondents' constitution to be inappropriate and shall accordingly delete such language from his recommended Order.

We also find, contrary to the Administrative Law Judge, that Respondent Beloit Association unlawfully sought to have employee John Nelson discharged from his position with Atlas Pattern Works (hereinafter Atlas) for failing to comply with the provisions of the union-security agreement. The record in this regard reveals that Nelson began working for Atlas in March 1977, and never became a member of Respondent Beloit, which represented Atlas' employees. On or about January 14, 1978, Nelson tendered to Respondent Beloit a check representing dues for the month of January 1978.[8] However, on January 17, 1978, Respondent Beloit returned the check to Nelson with a letter stating that, since he was not a union member, it could not accept dues from him which he did not owe. That same day, Respondent Beloit sent Atlas a letter informing it that Nelson had failed to comply with the terms of the union-security agreement that went into effect on December 19, 1977, and requested that Atlas "take appropriate action to rectify this situation." [9]

The General Counsel alleges that Respondent Beloit's letter to Atlas concerning Nelson constituted a request for his discharge for failing to meet his obligations under the union-security agreement and that Respondent had breached its fiduciary duty to inform employees of their obligations under such agreements. The Administrative Law Judge disagreed with the General Counsel noting that the letter to Atlas was sent 3 days before Nelson's discharge could actually have been requested under the agreement and further noting that no attempt to discharge Nelson or interfere with his job tenure was made

[8] Under the terms of the union-security agreement executed on December 19, 1977, employees were required to become members within 30 days of employment.

[9] An identical letter concerning Kohl's failure to comply with the union-security agreement was sent by Respondent Beloit to Atlas just 3 days before th Nelson letter. The Administrative Law Judge found that that letter amounted to an implied request for Kohl's discharge and violated Secs. 8(b)(2) and 8(b)(1)(A) of the Act. As noted in fn. 3, *supra*, no exceptions were taken to this finding.

upon the expiration of the required period. He also found that Respondent Beloit had not breached any fiduciary duty owed to Nelson and concluded that it had not violated Section 8(b)(2) or 8(b)(1)(A) of the Act, as alleged. As noted, we disagree with that finding.

It is well settled that a union seeking to enforce a union-security provision against an employee has a fiduciary duty to inform that employee of his obligations so that the employee may take the steps necessary to protect his job.[10] That duty, the Board has held, requires that a union provide the employee with "a statement of the precise amount and months for which dues [are] owed, as well as an explanation of the methods used in computing the amount," plus "an opportunity to make payment." [11] As evident from the above facts, Nelson, although apparently unaware or uncertain of what his obligations were under the union-security agreement, nevertheless made a good-faith effort to comply with those obligations by tendering his dues to Respondent Beloit on January 14. However, instead of advising Nelson of the extent of his obligations under the new contract when it rejected his tender of dues, Respondent Beloit chose merely to inform him that he was not a union member and that consequently he did not owe any dues.[12] Under these circumstances, we find that Respond-

[10] *Chauffeurs, Salesdrivers & Helpers Union, Local 572, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Ralphs Grocery Company)*, 247 NLRB 934 (1980).

[11] *Id.* at 935.

[12] It is apparent from Respondent Beloit's letter to Atlas, when viewed in light of the former's refusal to accept Nelson's tender of dues, that Respondent Beloit equated Nelson's continued employment with Atlas, under the terms of the union-security clause, with his becoming a full member of its Association. However, the Board in this respect has long held that "while contracts requiring membership as a condition of employment are lawful within the meaning of the proviso to Section 8(a)(3), a union cannot lawfully compel

ent Beloit has not fulfilled its fiduciary duty of informing Nelson of his obligations under the union-security agreement executed on December 19, 1977.[13]

Further, we find that Respondent Beloit's letter to Atlas requesting that it take "appropriate action" concerning Nelson's failure to join its Association constituted a request for his discharge. In this respect, we note, as previously stated, that an identical letter concerning Kohl's failure similarly to comply with the terms of the union-security agreement amounted to an implied request for his discharge. We see no reason why the Nelson letter should be construed any differently from the Kohl letter, especially when viewed in light of Respondent Beloit's breach of its fiduciary duty owed to Nelson. For the above-stated reasons, we find that Respondent Beloit un-

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. . . the discharge of an employee except for his failure to pay required dues and initiation fees." *Hershey Foods Corporation*, 207 NLRB 897 (1973).

[13] Even assuming *arguendo*, that Nelson knew of his obligations as of May 1977 under the prior contract, as alleged by Respondent Beloit, there was nevertheless a continuing obligation on Respondent's part to notify Nelson of his obligations under the new contract since "an employee is not presumed to be on notice as to the extent of his obligations to the union during successive terms." See *Conductron Corporation, a subsidiary of McDonnell Douglas Corporation*, 183 NLRB 419, 425 (1970), citing *N.L.R.B.* v. *International Union of Electrical, Radio, and Machine Workers, AFL-CIO* [*General Motors Corporation*], 307 F.2d 679 (D.C. Cir. 1962).

Moreover, in light of Respondent Beloit's rejection of Nelson's tender of dues on the ground that he had no dues obligations, we find that Respondent Beloit was thereafter estopped from demanding that Nelson be discharged for failing to meet his obligations under the union-security agreement. As previously noted, Respondent Beloit improperly equated continued employment under that agreement with the obtainment of full membership in its organization. Thus, it is clear that, even if Nelson had known of his obligations under the contract, Respondent Beloit would nevertheless have violated the Act, as alleged, by unlawfully requiring, as a condition of employment, that Nelson become a full, rather than a financial core, member of its Association.

lawfully sought to have Nelson discharged and in so doing violated Sections 8(b)(2) and 8(b)(1)(A) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Pattern Makers' League of North America, AFL-CIO, Washington, D.C., Rockford Association, Rockford, Illinois, and Beloit Association, Beloit, Wisconsin, their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Giving force or effect to League Law 13.

(b) Restraining or coercing employees who have resigned from Respondents by imposing fines on such employees for working during a sanctioned strike.

(c) Causing or attempting to cause Atlas Pattern Works or any other employer to discharge or otherwise discriminate against any of its employees for failure to comply with the terms of a union-security clause without adequately advising them of their obligations, in violation of Section 8(a)(3) of the Act.

(d) Imposing fines and other penalties upon former members for conduct in which they engaged after their effective resignation from Respondents, as conditions of regaining union membership under the provisions of a union-security clause, and attempting to cause an employer to seek an employee's compliance therewith.

(e) Threatening employees with physical harm, property damage, a loss of pension benefits, or any other reprisals for working during the course of a sanctioned strike.

(f) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, except to the extent that such rights may be affected by an ageement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Rescind the fines levied against employees for their post-resignation activity of working during the course of a strike, and notify said employees that such fines have been rescinded.

(b) Rescind the fines, excessive back dues, and readmission fee imposed upon William Kohl as a condition of his regaining membership in the Beloit Association, and so notify Kohl of such action.

(c) Expunge from the records of said employees any reference to fines levied against them for their post-resignation conduct.

(d) Notify Atlas Pattern Works, in writing, with copies to employees William Kohl and John Nelson, that they have no objection to the continued employment of said employees.

(e) Post at their business offices and meeting halls copies of the attached notice marked "Appendix."[14] Copies of said notice, on forms provided by the Regional Director for Region 33, after being duly signed by authorized representatives of Respondents, shall be posted by

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[14] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(f) Mail to the Regional Director for Region 33 sufficient signed copies of said notice for posting by employer-members of the Rockford-Beloit Pattern Jobbers Association, if the employers are willing, in places where notices to employees are customarily posted. Said copies, after being duly signed by Respondents' authorized representatives, shall be returned forthwith to the Regional Director.

(g) Notify the Regional Director for Region 33, in writing, within 20 days from the date of this Order, what steps Respondents have taken to comply herewith.

Date, Washington, D.C. December 16, 1982

JOHN R. VAN DE WATER, Chairman

DON A. ZIMMERMAN, Member

ROBERT P. HUNTER, Member
NATIONAL LABOR RELATIONS BOARD

[SEAL]

MEMBER FANNING, concurring and dissenting in part:

I agree with the majority in all respects save that I do not find that Respondents violated the Act by "giving force or effect to League Law 13," which simply prohibits resignations from the League during a strike or when one is imminent. As I explained in *Dalmo Victor*,[15] a labor organization's restrictions on resignation are relevant in cases involving union discipline of employees only to the extent that the labor organization defends that the employee is a union member and had consented to be bound to union rules. Where the restriction is not a valid one—and I agree that League Law 13 is not—it may not be relied upon as a bar to resignation; in that case, the labor organization cannot defend its action as one taken against a member.

The League Law does not, however, have any impact on the employment relationship and, therefore, does not violate any law or policy this Agency is charged with enforcing. It is a procedural rule purporting only to regulate the release of a member from the Union's rolls.

Neither Section 8(b)(1)(A) nor the Act in general regulates the purely internal affairs of labor organizations.[16] The proviso to Section 8(b)(1)(A) stakes out the limit of Federal restriction in this area and leaves

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[15] *Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115 (Dalmo Victor)*, 263 NLRB No. 141 (1982), sl. op., p. 8, fn. 13.

[16] Before the 1959 Landrum-Griffin amendments, which come under the jurisdiction of the Department of Labor, the Supreme Court observed that "the protection of union members in their rights as members from arbitrary conduct by unions and union officers has not been undertaken by federal law, and indeed the assertion of any such power has been expressly denied." *International Association of Machinists* v. *Gonzales*, 356 U.S. 617, 620 (1958).

to labor organizations the right to police their rolls.[17] Strictly internal union discipline, that is discipline which does not directly affect the employment relationship, is not regulated by the National Labor Relations Act unless it is contrary to an overriding policy in the labor laws.[18] Indeed, our jurisdiction reflects this: It requires an employer's involvement in commerce even in cases where a labor organization is the respondent.

There is no basis for concluding that a union rule, which on its face only regulates union membership rolls, may not be maintained without violating the Act. League Law 13 has no effect on the employment relationship, and its maintenance should not be unlawful simply because the League sought to rely upon it to show a binding union-member compact which had, in law, been vitiated.

Dated, Washington, D.C. December 16, 1982

JOHN H. FANNING, Member
NATIONAL LABOR RELATIONS BOARD

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[17] *Local 283, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO (Wisconsin Motor Corporation)*, 145 NLRB 1097, 1133 (1964).

[18] *Scofield, et al.* v. *N.L.R.B.*, 394 U.S. 423 (1969).

MEMBER JENKINS, dissenting in part:

I join in all my colleagues' findings except their affirmance of the Administrative Law Judge's finding that the fines imposed on the 10 employees who resigned from Respondents during the strike and crossed Respondents' picket lines to return to work violated Section 8(b)(1)(A) of the Act.

For the reasons set forth in my separate dissenting opinions in *Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115 (Dalmo Victor)*, 263 NLRB No. 141 (1982), and 231 NLRB 719 (1977), I would find that League Law 13, as applied herein, is a reasonable and narrow restriction on the employees' right to resign their union membership, and is within the ambit of the Union's control over its internal affairs. Accordingly, I also would find that the fines imposed pursuant to League Law 13 on the 10 employees who crossed the Unions' picket lines were lawful and not in violation of the proscriptions of Section 8(b)(1)(A) of the Act.

Dated, Washington, D.C. December 16, 1982

HOWARD JENKINS, JR., Member
NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT give force or effect to League Law 13.

WE WILL NOT impose fines and other penalties upon former members for conduct in which they engaged after resigning their membership from the League or its Associations.

WE WILL NOT impose such fines and other penalties upon former members for conduct in which they engaged after resigning their membership, as conditions of regaining union membership under the provisions of a valid union-security clause, and WE WILL NOT attempt to cause employers to seek employees' compliance therewith.

WE WILL NOT cause or attempt to cause employers to discharge or otherwise discriminate against employees who have not complied with the terms of a union-security agreement without first adequately informing employees of their obligations under said agreement.

WE WILL NOT threaten employees with physical harm, property damage, a loss of pension benefits, or any other reprisals for working during the course of a sanctioned strike.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their Section 7 rights, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

WE WILL rescind the fines and/or other similar penalties levied against employees who effectively resigned

during the strike and returned to work and will notify them that such fines and penalties have been rescinded.

WE WILL rescind the fine, excessive back dues, and readmission fee imposed upon William Kohl as a condition of his regaining membership in the Beloit Association, and so notify Kohl of such action.

WE WILL expunge from the records of said employees any reference to fines levied against them.

WE WILL notify Atlas Pattern Works, in writing, that we have no objections to the continued employment of employees William Kohl and John Nelson and shall send copies of said letter to the above-mentioned employees.

PATTERN MAKERS' LEAGUE OF NORTH AMERICA, AFL-CIO, and ITS ROCKFORD AND BELOIT ASSOCIATIONS

(Labor Organization)

Dated ——— By ———

(For Pattern Makers' League of North America, AFL-CIO)

Dated ——— By ———

(For Beloit Association)

Dated ——— By ———

(For Rockford Association)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Savings Center Tower, 16th Floor, 411 Hamilton Avenue, Peoria Illinois 61602, Telephone 309-671-7081.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
BRANCH OFFICE
SAN FRANCISCO, CALIFORNIA

Case No. 33-CB-1132

PATTERN MAKERS' LEAGUE OF NORTH AMERICA, AFL-CIO, AND ITS ROCKFORD AND BELOIT ASSOCIATIONS

and

ROCKFORD-BELOIT PATTERN JOBBERS ASSOCIATION

Lynne E. Gilfillan, Atty., Peoria, Ill., for the General Counsel.

William B. Peer, Atty., Washington, D.C., for the Respondents.

DECISION

Statement of the Case

GERALD A. WACKNOV, Administrative Law Judge: Pursuant to notice, a hearing with respect to this matter was held before me in Rockford, Illinois, on August 16, 1978. The charge was filed on January 23, 1978 by Rockford-Beloit Pattern Jobbers Association (herein called the Pattern Jobbers Association), and thereafter on March 7, 1978 a complaint and notice of hearing was issued alleging a violation by Pattern Makers' League of North America, AFL-CIO, and its Rockford and Beloit

Associations (herein called the Respondent Unions) of Section 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act, as amended (herein called the Act). On June 7, 1978, an amendment to the complaint was issued, alleging additional violations of Section 8(b)(1)(A) of the Act, and at the outset of the hearing the complaint was again amended to add an additional similar allegation. Respondents' answers to the complaint and amendments thereto deny the commission of any unfair labor practices.

The parties were afforded a full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce relevant evidence. Post-hearing briefs have been filed on behalf of General Counsel and Respondents.

Upon the entire record and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

Findings of Fact

I. Jurisdiction

The Pattern Jobbers Association is comprised of approximately 11 employer members engaged in the manufacture and sale of patterns for castings, with facilities located throughout the Rockford, Illinois and Beloit, Wisconsin vicinities. The Pattern Jobbers Association exists for the purpose, among others, of engaging in multi-employer collective bargaining with the Respondent Unions. In the course and conduct of their business operations, employer members of the Pattern Jobbers Association, collectively and in some cases individually, annually sell and ship from their various Illinois and Wisconsin facilities finished products valued in excess of $50,000 to points outside the States of Illinois and Wisconsin, and annually purchase and cause to be transferred and delivered to their various Illinois and Wisconsin facilities goods and materials valued in excess of

$50,000 which are transported to said facilities directly from other states. It is admitted and I find that the Pattern Jobbers Association and its employer members are, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organizations Involved

It is admitted and I find that Respondent Pattern Makers' League, Respondent Rockford Association, and Respondent Beloit Association are and have been at all times material herein labor organizations within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. *The Issues*

The principal issues raised by the pleadings are (1) whether Respondent Unions violated Section 8(b)(1)(A) of the Act by fining employees for returning to work during the course of a strike, after said employees had been expelled from or had tendered resignations to their respective Respondent Unions; (2) whether Respondent Beloit Association violated Section 8(b)(1)(A) and Section 8(b)(2) of the Act by attempting to cause an employer to discharge employees for their failure to join the Union; and (3) whether Respondent Unions threatened members in violation of Section 8(b)(1)(A) of the Act.

B. *The Facts*

On or about May 5, 1977 the Respondent Rockford and Beloit Associations commenced a strike against the Pattern Jobbers Association and its individual members. The strike ended on or about December 19, 1977 when negotiations culminated in a new collective-bargaining agreement. Between September 11 and December 2, 1977 approximately 11 employees individually tendered written

resignations to their respective Respondent Unions, and thereafter returned to work for their employers.

On September 11, 1977 William Kohl became the first member to tender his resignation. On September 12, 1977, apparently the date Kohl returned to work, he was expelled from membership by Respondent Beloit Association. On September 26, 1977 four additional employees tendered their written resignations, and thereafter the Respondent Unions received letters of resignation from approximately six additional individuals.[1] Apparently, only Kohl was expelled from membership.[2] Pursuant to League Law 13 of the Respondent Pattern Makers' League of North America[3] the remaining resignations were not accepted by the Respondent Unions, and each individual was thereafter notified of this action in writing by letter dated January 26, 1978, which letter also advised that at a special meeting held on January 23, 1978, a substantial fine, approximately commensurate with his earnings, had been levied against him for returning to work during a strike.[4]

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[1] All but two of the letters of resignation are perfunctory in nature, merely advising Respondent Unions of the member's resignation. One letter contains expressions of dissatisfaction with union officers and negotiators, and in another letter the member expresses his continued belief in unions but regretfully states "it has come down to my family and a hardship."

[2] The record is unclear whether employee Lannie McDonald was also expelled.

[3] League Law 13 provides:

> No resignation or withdrawal from an Association, or from the League, shall be accepted during a strike or lockout, or at a time when a strike or lockout appears imminent.

[4] The record does not contain Respondent Beloit Association's rationale for responding to Kohl's resignation letter with immediate explusion, rather than invoking League Law 13 against Kohl, thus prohibiting his resignation.

Employees Kohl and John Nelson both worked for Atlas Pattern Works (herein Atlas). On January 14, 1978 Respondent Beloit Association notified Atlas that Kohl "is not a member of the Collective Bargaining Agreement under Article Union Shop," effective December 19, 1977, which makes union membership mandatory after 30 days of employment under the contract. The letter further states that "His time expires January 19, 1978, please take appropriate action to rectify this situation." And by letter dated February 1, 1978, apparently pursuant to Kohl's request, Respondent Beloit Association furnished Kohl with application forms and advised him that to gain readmission into the union he would be required to pay back dues in the amount of $211, 3 months dues in advance, a $500 readmission fee and "$4,200 for damages due injury the Beloit Association for deserting the strike by returning to work." Kohl submitted an application in March or April 1978, but did not perfect his application by payment of the various amounts. He has not been discharged by his employer.

Nelson began working for Atlas in March 1977, prior to the strike, and never joined the Respondent Beloit Association. He apparently worked during the strike but the record is unclear as to whether or not he first struck and thereafter returned to work. On January 17, 1978 Respondent Beloit Association sent a similar letter to Atlas also advising in identical language that Nelson had not complied with the union security clause of the new collective-bargaining agreement, requesting that the employer "take appropriate action to rectify this situation." On the same date, Respondent Beloit Association returned to Nelson a check for union dues which he had previously submitted, stating, "Since you are not a member of this Association [the Union] can not accept any payment from you for dues you don't owe." Donald L. Hansen, business agent of Respondent Beloit Association, testified that neither he nor any union steward or official notified Nel-

son of his obligation to join the Union under the terms of the collective-bargaining agreement or that his discharge would be requested absent compliance therewith. According to Hansen, Nelson's application for membership was approved in early February, 1978 after the payment of the appropriate admittance fee and dues requirements for new members.

League Law 13 became embodied in the laws of Respondent Pattern Makers' League on October 1, 1976, after being ratified in August 1976 by the members of the various associations, including the members of Respondent Unions herein, pursuant to appropriate notice procedures. Respondents' representatives testified that League Law 13 became necessary in order to preclude defections from membership which, during the course of numerous prior strikes, caused substantial harm to the League and its members. Thus, the return to work of former members during the course of strikes resulted in the inability to negotiate successor contracts, the defunctness of associations, and the acceptance of substandard terms in collective-bargaining agreements.

According to unrebutted testimony, 43 members initially participated in the instant strike, and each was paid strike benefits while engaging in strike activity, primarily picketing, receiving between $125-$150 per week in benefits.[5] Hansen further testified that all members are required to take an Oath of Membership obligating them to adhere to the "Constitution, Laws, Rules and Decisions" of the League and its associations; all members, including those who later tendered their resignations, received due notice and all but one attended the strike vote which was conducted by secret ballot; and,

[5] However, Pattern Makers' League Law 35, clause 3, states that the monetary assistance benefit for strikers shall be only $40 per week. There is no record evidence clarifying this apparent discrepancy.

as a direct result of the defection of approximately 25 percent of the initial strikers, the strike not only was prolonged but it became necessary to accept a contract embodying substandard wages and benefits.

A joint meeting of Respondent Unions was held in September 1977 [6] and was attended by about 50-60 members. Employee Donald Carlson testified that during a question and answer session a question was asked regarding what would happen should an employee cross the picket line and return to work. During the course of the ensuing and sometimes intemperate discussion the general president of Respondent Pattern Makers' League, Charles Romelfanger, stated that "There has been instances where people crossing picket lines have ended up with broken arms and broken legs from doing such." During further discussion regarding an employee's pension, International Vice President Jack Gabelhausen mentioned a prior strike situation elsewhere, advising that a member had been either suspended or had resigned during the strike and had thereafter applied to get back in the Union. Gabelhausen went on to state that the individual had been assessed a fine of $15,000, and that until such a fine was paid his pension would decrease year by year until nothing was left of it.[7]

Employee David Darling testified that during the course of the aforementioned meeting Walter Bunk, financial secretary and business manager of Respondent Rockford Association, was asked what would happen if somebody crossed the picket line and returned to work. Bunk said, "Well, it has been known that some car and house windows have been broken." Darling asked if Bunk's re-

[6] The precise date of the meeting is unclear.

[7] Gabelhausen admitted stating that crossing a picket line and "possibly creating a non-union shop" could ultimately effect employees pensions.

marks constituted a threat and Bunk replied, "Take it for what it is worth." [8]

Employee Fred Bull, then an executive board member of Respondent Beloit Association, testified that at the Joint Executive Board meeting immediately following the aforementioned September 1977 general membership meeting, Romelfanger, who was asked what would happen if other employees crossed the picket line, replied to those present, including 12 employees, that he had known it to happen that sometimes employees could end up with broken arms or legs. Also, Bull testified that at another Executive Board meeting on October 10 or 11, 1977 Gabelhausen said, "For every day that these men work in non-union shops, they would lose a day of their pensions."

C. *Analysis and Conclusions*

In *Local 3184, United Automobile, Aerospace, Agricultural Implement Workers (Ex-Cell-O Corporation)*,[9] the Board summarizes the applicable law governing a union's fining of members for returning to work during the course of a strike as follows:

> Under the Supreme Court's *Granite State* decision,[10] these employees were bound to observe the strike for its duration merely by virtue of their status as union members at the strike's inception, and their return to work was protected by Section 7 if they first law-

[8] Bunk admitted that he may have mentioned that windows are broken and cars damaged during the course of strikes, but testified that these statements were not uttered as threats. Similarly, Bunk stated that Romelfanger mentioned "broken arms . . . things like that" but only in the context of describing what sometimes occurs during a strike, and not in a threatening manner.

[9] 227 NLRB 1045.

[10] *N.L.R.B.* v. *Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO (International Paper Box Machine Co.)*, 409 U.S. 213 (1973).

> fully resigned. If they had not resigned and therefore were still union members at the time they returned to work, they would have remained within the ambit of the Union's control.[29] Thus, the exercise of the Section 7 right to return to work during a strike which had commenced while an employee was a union member is restricted to the extent that the member must first resign.

[29] *N.L.R.B.* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967).

The Board majority in *Ex-Cell-O* found it unnecessary under the circumstances therein to "rule on the question of what, if any, provision in a union's constitution or by-laws limiting the time or manner of resignation would pass muster under the Act," but enunciated certain standards which must be met in order to provide the mandatory "reasonable accomodation" between the often conflicting interests of the union and its members during a strike. Thus, the Board majority in interpreting and applying Supreme Court decisions states that any rule imposing restraints on members' rights to resign during a strike must be precisely tailored to the union's needs and therefore no broader than necessary to serve the union's legitimate interests, and must accord "weight to the competing considerations which may *necessitate* resignation during a strike," such as economic hardship.[11] [Emphasis supplied.]

There is no contention by the General Counsel that League Law 13 was improperly enacted or that the mem-

[11] See *Granite State Joint Board, supra; Scofield* v. *N.L.R.B.*, 394 U.S. 423. See also, *Local Lodge No. 1994, International Association of Machinists and Aerospace Workers, AFL-CIO (O.K. Tool Company, Inc.)*, 215 NLRB 651; *General Teamsters Local 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Loomis Courier Service, Inc.)*, 237 NLRB No. 34.

bers who tendered their resignations were unaware of the restrictions on resignation imposed therein. While there are various infirmities inherent in League Law 13 or in the failure of the Respondent Unions to uniformly apply it to all members who tendered their resignations,[12] it is clear that this Law fails to comply with the Board's standard enunciated in *Ex-Cell-O* that such a provision

[12] Thus, it appears the Law would prohibit resignation or withdrawals during strikes by members who are leaving the industry or who may have secured jobs with other non-struck employers, and would further prohibit resignation even if the strike were unprotected. See *Communications Workers of America, AFL-CIO, Local 1127 (New York Telephone Company)*, 203 NLRB 258. Further, the language precluding resignations when a strike "appears imminent" is so vague and susceptible to such varying interpretation as to severely limit the statutory right of members to resign even prior to a strike vote and possibly even prior to the commencement of negotiations. Such indefinite limitations placed upon an employee's statutory right to resign may run afoul of the Board's requirement that in order for such limitation to be binding a member must have actual knowledge of or have indicated his consent to be bound by his contractual commitment vis-avis the Union. See *Ex-Cell-O Corporation, supra; Loomis Courier Service, Inc., supra.* It would appear that such a requirement presupposes some particularity regarding these commitments so that a member may timely and effectively resign. Compare the constitutional prohibition in *Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115 (Dalmo Victor)*, 231 NLRB No. 115. Moreover, by couching the member's obligation in such uncertain terms, the Union may have breached a fiduciary duty to "deal fairly" with employees whom the Union represents. See *Loomis Courier Service, Inc., supra*, slip opinion p. 7. Finally, the Respondent Unions did not consistently invoke and perhaps waived their "right" to invoke League Law 13. Thus, as noted above, William Kohl was the first member to tender his resignation. He was expelled from membership immediately thereafter, prior to the other individuals involved herein having tendered their resignations. Under such circumstances the remaining employees would quite reasonably believe that, similarly, League Law 13 would not be invoked to prohibit their resignations. Indeed, the record shows no notification to them that their resignations were unacceptable until January 26, 1978, well after the conclusion of the strike and months after the tenders of resignation.

must accord weight to circumstances necessitating resignation during a strike. The blanket prohibition of resignations or withdrawals during strikes embodied in League Law 13 permits of no exceptions or qualifications, obviously according no weight whatsoever to the competing considerations often confronting striking employees. Thus, I find that League 13 is an impermissible encroachment on employees' statutory right to resign union membership and that the fines imposed thereunder are in violation of the Act. *Local 1384 United Automobile, Aerospace, Agriculture Implement Workers (Ex-Cell-O Corporation), supra.* But cf. *Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115 (Dalmo Victor), supra,* and the dissenting opinions therein.

During the course of discussing possible methods of dealing with anticipated resignations of union members President Romelfanger voiced his agreement and elaborated upon the statement of one member, who remarked that some of the men on the picket line could get pretty hostile, adding that it had sometimes happened that strikebreakers end up with broken arms or broken legs. Similar statements were made, in similar contexts, by Vice President Gabelhausen and Business Manager Bunk at various union meetings. Further, it was, at the least, strongly suggested by Gabelhausen that employees would lose a day of pension benefits to which they were entitled for each day they worked during the strike.

I find that the statements attributed to Romelfanger, Gabelhausen and Bunk, were made substantially as witnesses Carlson, Darling and Bull so testified. Regardless of whether the various union officials intended their remarks to be taken as direct threats of reprisal, such statements are reasonably subject to such interpretation, particularly in the context described above.[13] Further,

[13] *American Lumber Sales*, 229 NLRB 414, 416.

no effort was made by any union official to dispel such reasonable beliefs.[14] Moreover, when Bunk was asked whether his remarks concerning broken windows and damage to cars of employees constituted a threat, Bunk replied, "Take it for what it is worth," clearly indicating that indeed such was the case. I find that the aforementioned statements constitute conduct violative of Section 8(b)(1)(A) of the Act as alleged. See *Service Employees International Union Local 254, AFL-CIO*, 218 NLRB 1399; *Progressive Mine Workers of America, District No. 1*, 188 NLRB 489.

The General Counsel submits that the letters from Respondent Beloit Association to Atlas, the employer of Kohl and Nelson, were requests for the discharge of these employees for failure to comply with the union security provisions of the new contract. Further, the General Counsel maintains that by making such a request to the employees' employer Respondent Beloit Association breached a fiduciary duty to deal fairly with the employees affected, which duty, at a minimum, requires that a union inform the employee of his obligations under a union security provision in order that he may protect his job tenure.

Hansen testified that the letters to Atlas regarding Kohl and Nelson were designed to prompt Atlas to, in turn, cause Kohl and Nelson to comply with the contract's union security provisions.[15] The letter regarding Nelson was sent to Atlas 3 days prior to the time that Respondent Beloit Association could have requested his immediate discharge, and was not inconsistent with Hansen's testimony regarding the purposes of the letter. Upon

[14] See *Liberty Nursing Homes, Inc.*, 236 NLRB No. 55, slip opinion pp. 5-6.

[15] The record does not contain the wording of the union security provisions.

the expiration of the appropriate period, the record shows no attempt to cause the discharge of Nelson. Further, the record strongly indicates that Nelson was aware of his obligations; indeed Nelson had previously tendered a check for dues prior to his becoming a member. Most importantly, the job tenure of Nelson was not disrupted in any fashion, and he continued in the employ of Atlas and thereafter became a member of the Respondent Beloit Association. Based upon the foregoing, I find the record evidence insufficient to support the complaint allegation that Respondent Beloit Association unlawfully attempted to cause Atlas to discharge Nelson. Nor does it appear that Respondent Beliot Association breached a fiduciary duty to Nelson.

However, the facts regarding Kohl are quite different. It is not in dispute that Respondent Beloit Association expelled Kohl from membership immediately upon receiving his letter of resignation. Thereafter, Respondent Beloit Association sent a letter to Atlas urging that Kohl comply with the union security provisions of the contract by becoming a member of said Union. However, unlike the treatment of Nelson, Respondent Beloit Association thereupon erected a barrier to Kohl's compliance with the contract requirements by conditioning his membership in the Union upon the payment of substantial sums for back dues obviously imposed for periods during which Kohl had no dues obligation,[16] a readmission fee of $500, and an additional amount of $4,200 for damages. It is clear that all such amounts were imposed as a penalty for conduct in which Kohl was engaged after having effectively resigned his Union membership. Therefore, having conditioned membership, mandatory under a valid union security clause, upon the payment of such apparently unprecedented and excessive amounts and by attempting to cause the employer to seek Kohl's compliance therewith

[16] According to the Laws of the Pattern Makers' League, 3 months advance dues are customarily required of new members.

upon the implicit threat of discharge, Respondent Beloit Association has violated Section 8(b)(1)(A) and 8(b)(2) of the Act.[17] *International Association of Machinists and Aerospace Workers, District No. 71 (Whitaker Cable Corporation)*, 224 NLRB 580; *Local 1936, Brotherhood of Railway, Airline and Steamship Clerks, (NCR Corporation)*, 229 NLRB 243; *Business Machine Technicians and Engineers Section, Brotherhood of Airline and Steamship Clerks, AFL-CIO (NCR Corporation)*, 235 NLRB No. 86.

Conclusions of Law

1. The Pattern Jobbers Association is an employer engaged in commerce within the meaning of Section 2(6) and(7) of the Act.

2. Respondents Pattern Makers' League of North America, AFL-CIO, Rockford Association, and Beloit Association are labor organizations within the meaning of Section 2(5) of the Act.

3. By maintaining as an obligation of membership and by invoking League Law 13 against members, which law unreasonably precludes members' effective resignation during a strike or when a strike appears imminent, Respondents have violated Section 8(b)(1)(A) of the Act.

4. By imposing fines against former members who had duly resigned prior to returning to work during the course of a strike, Respondents have violated Section 8(b)(1)(A) of the Act.

[17] While the complaint alleges only the unlawfulness of the fine, I find that the back dues and excessive readmission fee required of Kohl as a condition of becoming a member of the Union are likewise tantamount to unlawfully imposed fines. Whether Respondent Beloit Association could lawfully impose a reasonable readmission fee based on nondiscriminatory considerations is a matter properly left for the compliance stage of this proceeding. See *Metal Workers' Alliance, Incorporated, (TRW Metals Division, TRW, Inc.)*, 172 NLRB 815.

5. By conditioning admission in the union, under the terms of a union security clause, upon the payment of excessive back dues, an excessive readmission fee and a fine, and concomitantly attempting to cause an employer to seek an employee's compliance therewith, Respondent Beloit Association has violated Section 8(b)(1)(A) and 8(b)(2) of the Act.

6. By threatening employees with reprisals in the form of physical harm or loss of accrued pension benefits, Respondents have violated Section 8(b)(1)(A) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) of the Act.

The Remedy

Having found that the Respondents engaged in certain unfair labor practices, I recommend that they be required to cease and desist therefrom. In order to effectuate the purposes of the Act, I shall also recommend that Respondents Beloit Association and Rockford Association rescind the fines unlawfully imposed, and expunge from the records of said employees any reference to fines levied against them for post-resignation conduct; and that Respondent Beloit Association rescind the other excessive monetary penalties imposed against William Kohl as a condition of his regaining union membership.

Further, I shall recommend that League Law 13 be expunged from the Laws of the Pattern Makers' League of North America. League Law 13 unequivocally prohibits resignations during the course of a strike or when a strike appears to be imminent and, as found herein, is unlawful. As the Law is subject to no lawful interpretation and as it may inhibit employees, unaware of its unenforceability, from exercising their Section 7 rights to resign during the course of or prior to a strike, it appears necessary under the circumstances that League Law 13 be excised from the League's body of laws.

Upon the basis of the foregoing findings of the fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: [18]

ORDER

Respondents Pattern Makers' League of North America, AFL-CIO, Rockford Association and Beloit Association, shall:

1. Cease and desist from:

(a) Giving force or effect to League Law 13.

(b) Restraining or coercing employees who have resigned from Respondents, by imposing fines on such employees for working during a sanctioned strike.

(c) Threatening employees with physical harm, property damage, a loss of pension benefits, or any other reprisals for working during the course of a sanctioned strike.

(d) Imposing fines and other penalties upon former members for conduct in which they engaged after their effective resignation from Respondent, as conditions of regaining union membership under the provisions of a union security clause, and attempting to cause an employer to seek an employee's compliance therewith.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

(a) Expunge from the Laws of the Pattern Makers' League of North America, AFL-CIO any reference to League Law 13.

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[18] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(b) Rescind the fines levied against employees for their post-resignation activity of working during the course of a strike, and notify said employees that such fines have been rescinded.

(c) Rescind the excessive back dues and readmission fee imposed upon William Kohl as a condition of his regaining membership in the Beloit Association, and so notify Kohl of such action.

(d) Expunge from the records of said employees any reference to fines levied against them for post-resignation conduct.

(e) Post at their business offices and meeting halls copies of the attached notice marked "Appendix." [19] Copies of said notice, on forms provided by the Regional Director for Region 33, after being duly signed by authorized representatives of Respondents, shall be posted by Respondents immediately upon receipt thereof, and shall be maintained by them for 60 consecutive days thereafter in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced or covered by any other material.

(f) Mail to the Regional Director for Region 33 sufficient signed copies of said notice for posting by employer members of the Rockford-Beloit Pattern Jobbers Association, if the employers are willing, in places where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director, after

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[19] In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

being duly signed by Respondents' authorized representatives, shall be returned forthwith to the Regional Director.

(g) Notify the Regional Director for Region 33 in writing within 20 days from the date of this Order, what steps the Respondents have taken to comply herewith.

Dated: NOVEMBER 21, 1978

/s/ Gerald A. Wacknov
GERALD A. WACKNOV
Administrative Law Judge

APPENDIX

JD-(SF)-276-78

NOTICE TO
MEMBERS

[SEAL] [SEAL]

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE HEARBY NOTIFY YOU that League Law 13 of the Pattern Makers' League of North America, AFL-CIO, has been found to unlawfully prohibit employees from resigning their membership from the League or its Associations during the course of a strike or when a strike appears imminent.

WE WILL NOT give force or effect to League Law 13 and it will be expunged from the League's body of laws.

WE WILL NOT impose fines and other penalties upon former members for conduct in which they engaged after resigning their membership from the League or its Associations.

WE WILL NOT impose such fines and other penalties upon former members for conduct in which they engaged after resigning their membership, as conditions of regaining union membership under the provisions of a valid union security clause and WE WILL NOT attempt to cause employers to seek employees' complaince therewith.

WE WILL rescind the fines and other similar penalties levied against employees for their post-resignation activity of working during the course of a strike, and notify said employees that such fines and penalties have been rescinded.

WE WILL expunge from the records of said employees any reference to fines levied against them for post-resignation conduct.

WE WILL NOT threaten employees with physical harm, property damage, loss of pension benefits, or any other reprisals for working or returning to work during the course of a sanctioned strike.

PATTERN MAKERS' LEAGUE OF NORTH AMERICA, AFL-CIO, and ITS ROCKFORD AND BELOIT ASSOCIATIONS

(Unions)

Dated _____ By _____

(For Pattern Makers' League of North America, AFL-CIO)

Dated _____ By _____

(For Beloit Association)

Dated _____ By _____

(For Rockford Association)

This is an Official Notice and Must not be Defaced by Anyone

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Savings Center Tower—16th Floor, 411 Hamilton Avenue, Peoria, IL 61602. Telephone Number—(309) 671-7091.